Supreme Court, U.S.
FILED

041087 FEB 7 2005

No.

IN THE

Supreme Court of the United States

MARSHALL SANDERS,

Petitioner,

v.

IN RE: ESTATE OF HARRY SANDERS, DECEASED,
ROSALYN VINE, EXECUTRIX,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The Tennessee highest courts have violated Article I and the Fourteenth Amendment of the United States Constitution. The gravamen of the Petitioner's claim is the unpaid obligation of his decedent father, as obligor, to pay the Petitioner's educational expenses pursuant to a valid support order rendered by the Michigan Court as a part of the Final Decree of Divorce of the Petitioner's parents.

The Tennessee courts failed to enforce the terms of an unambiguous foreign divorce settlement agreement in violation of the guarantees of full faith and credit and due process. Tennessee's courts were barred by the doctrine of res judicata in revising an enforceable judgment. Therefore, the Writ for Certiorari should be granted so that the enforcement of foreign divorce settlement agreements are not scrutinized and objectively interpreted in other jurisdictions. Public policy mandates that contracts involving divorce and settlement agreements be enforced according to their terms and not revised and scrutinized by a non-party to the contract.

WHETHER THE PETITIONER'S CLAIM AGAINST-THE ESTATE FOR THE REIMBURSEMENT OF TUITION SHOULD HAVE BEEN ALLOWED SINCE THE UNAMBIGUOUS DIVORCE SETTLEMENT CONTRACT AND JUDGMENT WAS ERRONEOUSLY REJECTED BY THE TENNESSEE STATE COURTS IN VIOLATION OF THE DOCTRINES OF THE UNITED STATES CONSTITUTION OF FULL FAITH AND CREDIT AND DUE PROCESS?

TABLE OF CONTENTS

Questions Presented i

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Statement of The Basis of Jurisdiction of The Supreme Court 1

Constitutional, Statutory And Ordinance Provisions Involved In This Case 2

Statement of the Case 4

Argument 8

A. The Petitioner's Claim Against The Estate For the Reimbursement Of Tuition Was Wrongfully Denied In Violation Of The Petitioner's Due Process Rights And Guarantees Under Full Faith And Credit Clause 8

B. By Dismissing The Petitioner's Claim Without A Hearing, The Tennessee Highest Courts Violated The Petitioner's Due Process Rights By Failing To Give The Petitioner The Opportunity To Present His Claim Of A Valid And Enforceable Contract 17

Conclusion 20

TABLE OF AUTHORITIES

Page

Cases:

Alaska Packers Assn. v. Industrial Accident Comm'n, 294 U.S. 532, 542, 55 S.Ct. 518, 521, 79 L.Ed. 1044 (1935) 10,13-15

Allstate Insurance Company v. Hague, 449 U.S. 302, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981) 16

Aussie v. Aussie, 182 Mich.App. 454, 452 N.W.2d 859, 863 (Mich.Ct.App.1990) 12

Carroll v. Lanza, 349 U.S. 408, 75 S.Ct. 804, 99 L.Ed. 1183 (1955) 14

Clay v. Sun Insurance Office, Ltd., 377 U.S. 179, 84 S.Ct. 1197, 12 L.Ed. 229 (1964) 13,14

Howlett v. Rose, 496 U.S. 356, 382 n.26, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990) 9

Hughes v. Fetter, 341 U.S. 609, 611, 71 S.Ct. 980, 95 L.Ed. 1212 (1951) 9

McKnett v. St. Louis & S.F. Ry. Co., 292 U.S. 230, 233, 54 S.Ct. 690, 78 L.Ed. 1227 (1934) 9

Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 195, 103 S.Ct. 2706, 270, 9, 77 L.Ed.2d 180 (1982) 17

Miller v. Bock Laundry Machine Co., 64 Ohio St.2d 265 (1980) 12

Milwaukee County v. M.E. White Co., 296 U.S. 268, 56 S.Ct. 229, 80 L.Ed. 220 (1935).....14

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) 17

Nevada v. Hall.,440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed.2d 416 (1979).....13,15

Ovaitt v. Ovaitt, 204 N.W.2d 753 (Mich.App.1972).....11

Pacific Employer Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493, 59 S.Ct. 629, 83 L.Ed. 940 (1939).....15

Penland v. Penland, 521 S.W.2d 222 (1975) 11

Thomas v. Washington Gas Light Co., 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed.2d 757 (1980).....14

Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S.Ct. 1340, (1988).....17

Watson v. Employers Liability Assurance Corp., 348 U.S. 66, 75 S.Ct. 166, 99 L.Ed. 74 (1954).....13

Constitutional Provisions:

Constitution of the United States, Article IV § 1....2,9,11,16

Constitution of the United States, Amendment XIV 2

Statutes:

36 U.S.C.A. 6 §§20-29 8

42 U.S.C. § 666(a)(9) 2,10

T.C.A. §§ 28-3-109 and 28-3-110 6

T.C.A. §36-5-101(a)(5)(1987) 11

T.C.A. §36-5-101(a)(5)(1987) 3

T.C.A. §36-5-103(g) 18

APPENDIX

Appendix A- Order, filed January 12, 2005 ..... 1a

Appendix B – Order, filed January 4, 2005 ..... 3a

Appendix C – Opinion, filed March 25, 2004 ..... 4a

Appendix D – Order of Court, dated December 5, 2002 ..... 25a

Appendix E – Agreed Order, dated January 24, 2003 ..... 28a

OPINIONS BELOW

The Order of the Supreme Court of Tennessee filed January 12, 2005 is set forth in the Appendix, p. 1a. The Opinion of the Court of Appeals of Tennessee at Nashville dated March 25, 2004 is set forth in the Appendix, p. 4a. The Order of the Court of the Chancery Court for Bedford County dated December 5, 2002 is set forth in the Appendix, p. 25a.

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

The statutory provision for this Court's jurisdiction is 28 U.S.C. Section 1254. The Tennessee Supreme Court denied the Petitioner's request for a rehearing on January 12, 2005. The Court of Appeals of Tennessee at Nashville issued an Opinion on March 25, 2004 affirming the Chancery Court for Bedford County's decision. This Petition is timely filed.

CONSTITUTIONAL, STATUTORY AND ORDINANCE PROVISIONS INVOLVED IN THIS CASE

Constitution:

1. **U.S.C.A. Const. Art. IV § 1.**

   Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

2. **Fourteenth Amendment.**

   The Due Process Clause of the Fourteenth Amendment provides that no State "shall ... deprive any person of life, liberty, or property, without due process of law...."

Statutes:

42 U.S.C. §666(a)(9):

a) a judgment by operation of law, with full force, effect and attributes of a judgment of the state, including the ability to be enforced;

b) entitled as a judgment to full faith and credit in such state and in any other state; and

c) not subject to retroactive modification by such state or by any other state.

T.C.A. §36-5-101(a)(5)(1987):

"Any order for child support shall be…entitled to full faith and credit in this state and in any other state."

STATEMENT OF THE CASE

Marshall Sanders, the Petitioner, files this Writ based upon the violations of his constitutional rights by the Tennessee highest courts.

In 1967, a Michigan court granted his father, Harry Sanders, a Default Decree of Divorce from his mother, Dee Sanders. The Decree divided the marital property, ordered Mr. Sanders to pay alimony, and gave the Petitioner's mother custody of him. The Petitioner was sixteen years old at the time. One clause of the Decree was entitled "Support of Minor Child", which clause ordered Mr. Sanders to pay child support of $35 per week until the Petitioner reached 18 years of age.

A separate clause entitled "Higher Education of Minor Child" ordered that "the payment of expenses for the higher education of the minor child shall be in accordance with the terms of a Property Settlement Agreement entered into between the parties on the 2d day of August 1967, which Property Settlement Agreement is attached hereto and made a part hereof." The Property Settlement Agreement stated that "The husband agrees to pay for the college education of the minor son of the parties, Marshall Sanders, so long as said Marshall Sanders wishes to attend an accredited college or university and is accepted as a student by said institution." A 1970 modification of the Agreement did not change the college education provision.

Harry Sanders died in Bedford County, Tennessee, on January 7, 2002, at the age of 82. The beneficiaries named in

his Last Will and Testament and its Codicil were the Petitioner, another son of Mr. Sanders, Mr. Sanders' granddaughter, and a woman named Rosalyn Vine. The will bequeathed five percent of the net estate to the Petitioner and sixty percent to Ms. Vine. The testator named Rosalyn Vine as the personal representative of his estate.

On February 13, 2002, Ms. Vine filed a Petition in the Chancery Court of Bedford County in Tennessee to Probate Mr. Sanders' will. The court issued Letters Testamentary to Ms. Vine, and she posted bond for $352,410, which was the gross value of the estate.

In March of 2002, the Petitioner filed a claim against the estate. The Petitioner submitted a $495,000 claim for educational expenses that he had allegedly incurred between 1968 and 2002, contending that he was entitled to reimbursement under the higher education provision of his parents' separation agreement. The Petitioner submitted evidence to support his claim. Also, he claimed that he was entitled to "near term anticipated college expenses" of $350,000, resulting from ten future semesters at $35,000 per semester, as well as an unascertainable amount for long term educational expenses leading to advanced degrees in law. The Petitioner argued, that unlike Tennessee law, Michigan law provided the provisions of a property settlement agreement for the education expenses of a child of the parties, who is a minor at the time of entry, merges into the decree as child support, including those portions that relate to post-majority support.

Ms. Vine filed exceptions to the Petitioner's claims. Among other things, the exceptions stated that the claims in question were barred by the ten year statutes of limitations for contracts and for judgments under Tennessee statutes.[1]

The trial court conducted a hearing on November 8, 2002. Argument focused on both Michigan and Tennessee law relating to child support, to agreements for educational support of children who have passed the age of minority, and to the statutes of limitation applicable to such agreements. At the conclusion of the hearing, the chancellor announced that he would dismiss the claim because he found that the language in the divorce decree and the PSA regarding "the education of the minor child" did not indicate an intention to furnish educational support to the claimant past the age of 21. He also stated that a contrary holding would lead to an unconscionable result.

As a result, the Petitioner appealed to the Court of Appeals to Tennessee. On appeal, the Petitioner argued that a correct interpretation of the relevant choice of law statutes would have compelled the trial court to approve his claim. The Petitioner alleged that: (1) under Michigan law, his father's agreement to pay for his college education would be enforced as a child support order, not as a contract; and (2) the 1997 removal of statute of limitations defenses to enforcement of child support orders can be applied retroactively to his claim.

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[1] Tenn.Code Ann. §§ 28-3-109 and 28-3-110.

On March 25, 2004, the Appellate Court denied the Petitioner's appeal, treating the support obligation as one of contract under the laws of Tennessee, and not Michigan, and barred the Petitioner's claim under the six year statute of limitations for contracts. A request to the Supreme Court for a rehearing en banc was also denied.

Thus, the Petitioner has filed a Writ for Certiorari to the Honorable Court based upon the issues and argument presented herein.

ARGUMENT

I. THE PETITIONER'S CLAIM AGAINST THE ESTATE FOR THE REIMBURSEMENT OF TUITION WAS WRONGFULLY DENIED IN VIOLATION OF THE PETITIONER'S DUE PROCESS RIGHTS AND GUARANTEES UNDER FULL FAITH AND CREDIT CLAUSE.

Introduction

The Tennessee courts abused its jurisdictional powers and dismissed without a hearing a valid and enforceable judgment, contract and settlement obtained in a Michigan court in violation of federal law.

According to the Uniform Interstate Family Support Act ("UIFSA")[2], Michigan law governed the "nature", "extent", and "duration" of the support obligation. However, the Tennessee highest courts deviated from UIFSA and denied the Petitioner's claim of a vested right.

"The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution. The privileges and immunities clause requires a state to accord to citizens of other states substantially the same right of access

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[2] 36 U.S.C.A. 6 §§20-29.

to its courts as it accords to its own citizens." *Howlett v. Rose,* 496 U.S. 356, 382 n. 26, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990), quoting *McKnett v. St. Louis & S.F. Ry. Co.,* 292 U.S. 230, 233, 54 S.Ct. 690, 78 L.Ed. 1227 (1934) (Brandeis, J., concurring).

The Tennessee highest courts have abused its powers and violated the federal statutes and United States constitution in denying the Petitioner's claim obtained in Michigan by a court of competent jurisdiction.

A. The Full Faith and Credit Clause only gave the Tennessee courts jurisdiction to enforce the Michigan judgment and not misinterpret and decipher the judgment.

There is authority that the full faith and credit clause of the constitution requires that a state make its courts available for resolving foreign tort and contract disputes. *Hughes v. Fetter,* 341 U.S. 609, 611, 71 S.Ct. 980, 95 L.Ed. 1212 (1951) (a state "cannot escape this constitutional obligation to enforce the rights and duties validly created under the laws of other states by the simple device of removing jurisdiction from courts otherwise competent," citing U.S. Const. Art. IV §1). The Petitioner had a vested right to support obligations of higher education pursuant to Michigan law. Instead of enforcing the vested right, Tennessee interpreted the support obligations using its own statutes instead of Michigan's statute.

Furthermore, the Tennessee high courts violated federal law regarding support obligations. The federal statute, as amended, provides that in order to receive federal assistance,

each state must utilize procedures which guarantee that child support payment is:

a) a judgment by operation of law, with full force, effect and attributes of a judgment of the state, including the ability to be enforced;

b) entitled as a judgment to full faith and credit in such state and in any other state; and

c) not subject to retroactive modification by such state or by any other state.

42 U.S.C. §666(a)(9).

Instead of applying federal law and giving full faith and credit to the Michigan support decree, the Tennessee courts applied its own state laws in denying and dismissing the Petitioner's claim. It is clear that a litigant challenging the forum's application of its own law to a lawsuit properly brought in its courts bears the burden of establishing that this choice of law infringes upon interests protected by the Full Faith and Credit Clause. See *Alaska Packers Assn. v. Industrial Accident Comm'n,* 294 U.S. 532, 542, 55 S.Ct. 518, 521, 79 L.Ed. 1044 (1935). The Petitioner met his burden of proof that under the federal constitution and statute, the Petitioner's claim was an enforceable vested right and no doctrine (i.e. statute of limitations) barred his right. Under Michigan law, support agreements for education expenses, the nature of the obligation becomes child support when it is

merged into the decree of divorce. *Ovaitt v. Ovaitt*, 204 N.W.2d 753 (Mich.App.1972). There is no dispute that the Petitioner's parent's support agreement merged into the decree of divorce. The Petitioner's claims were enforceable against the estate, regardless of whether the education expenses relate to a period during the child's minority, or after the child reached the age of majority. *Id.* Thus, the Tennessee courts should have been estopped from applying its own state law and denying support.[3] Under the federal constitution, the lower courts' duty was to grant the Petitioner's claim for support against his deceased father's estate.

Moreover, the Tennessee courts violated its own statute that required that "any order for child support shall be...entitled to full faith and credit in this state and in any other state." T.C.A. §36-5-101(a)(5)(1987). In the lower court's opinions, it appears that the Tennessee courts want their support orders to be enforced in other jurisdictions, but not vice versa.

A divorce granted in one jurisdiction is enforceable in another jurisdiction through the Full Faith and Credit clause of the United States Constitution. U.S.C.A. Const. Art. 4, §1. The Full Faith and Credit clause does not require a court to recognize a judgment rendered without jurisdiction or without notice and fair opportunity to be heard. *Id.* There was

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[3] In fact, the Tennessee Appeals Court acknowledged that its law was different than Michigan's law and that the property settlement agreement remained contract in nature with applicable statute of limitations. *Penland v. Penland*, 521 S.W.2d 222 (1975).

no dispute that the Michigan decree was rendered by a court of competent jurisdiction with personal and subject matter jurisdiction over the Petitioner's parents. Since there was an enforceable support order that was merged into the divorce decree, then the provisions should have been recognized by the foreign state.

The Petitioner alleges that he is entitled to prevail by virtue of the choice of law provisions of Tennessee law and the child support provisions of Michigan law. Under Tennessee Code Annotated § 36-5-2604(a), the law of Michigan must be applied to determine "the nature, extent, amount and duration" of a support obligation and that, under Michigan law, his father's agreement to pay his college expenses would be considered a support order, not a contractual obligation. The Michigan appellate courts do not preclude the enforcement of a contract to provide college expenses where that agreement was of record or part of the judgment in the case. *Aussie v. Aussie,* 182 Mich.App. 454, 452 N.W.2d 859, 863 (Mich.Ct.App.1990). Michigan law allows an agreement to provide post-majority support to be enforced as a court order or judgment.

The law of the state wherein the judgment was rendered, here, Michigan, must be examined in order to decide what effect that state would have given the judgment. *Miller v. Bock Laundry Machine Co.,* 64 Ohio St.2d 265 (1980). If the original decree is not enforced in a different state, then the courts throughout the county would struggle in the enforcement of judgments from out of state. Public policy mandates that support orders be recognized in all jurisdictions, or else, the "payor" of the support would "jurisdiction

shop" in order to avoid payments – clearly not the intent of the full faith and credit clause.

Implicit in the inquiry is the recognition that a set of facts giving rise to a lawsuit, or a particular issue within a lawsuit, may justify, in constitutional terms, application of the law of more than one jurisdiction. See, *e. g. Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66, 72-73, 75 S.Ct. 166, 169-170, 99 L.Ed. 74 (1954); n.11, *infra*. See generally *Clay v. Sun Insurance Office, Ltd.*, 377 U.S. 179, 181-182, 84 S.Ct. 1197, 1198, 12 L.Ed. 229 (1964) ("*Clay II*"). As a result, the forum state may have to select one law from among the laws of several jurisdictions having some contact with the controversy. Tennessee should have selected Michigan law to enforce the support decree.

In deciding constitutional choice-of-law questions, whether under the Due Process Clause or the Full Faith and Credit Clause,[4] the Supreme Court has traditionally exam-

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[4] The Court has taken a similar approach in deciding choice-of-law cases under both the Due Process Clause and the Full Faith and Credit Clause. In each instance, the Court has examined the relevant contacts and resulting interests of the State whose law was applied. See, *e. g., Nevada v. Hall*, 440 U.S. 410, 424, 99 S.Ct. 1182, 1190, 59 L.Ed.2d 416 (1979). Although at one time the Court required a more exacting standard under the Full Faith and Credit Clause than under the Due Process Clause for evaluating the constitutionality of choice-of-law decisions, see *Alaska Packers Assn. v. Industrial Accident Comm'n*, 294 U.S. 532, 549- 550, 55 S.Ct. 518, 524-525, 79 L.Ed. 1044 (1935) (interest of State whose law was applied was no less than interest of State whose

ined the contacts of the State, whose law was applied, with the parties and with the occurrence or transaction giving rise to the litigation. See *Clay II, supra*, at 183, 84 S.Ct., at 1199. In order to ensure that the choice of law is neither arbitrary nor fundamentally unfair, see *Alaska Packers, supra at 542, 55 S.Ct. 521*, the Court has invalidated the choice of law of a State which has had no significant contact or significant aggregation of contacts, creating state interests, with the parties and the occurrence or transaction. Since the decree was entered in Michigan and the Petitioner had no contact in Tennessee then Michigan law should have been applied.

The Full Faith and Credit Clause is one of several provisions in the Federal Constitution designed to transform the several states from independent sovereignties into a single, unified nation. See *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 271-272, 100 S.Ct. 2647, 2655-2656, 65 L.Ed.2d 757 (1980); *Milwaukee County v. M. E. White Co.*, 296 U.S. 268, 276-277, 56 S.Ct. 229, 233-234, 80 L.Ed. 220 (1935). The Full Faith and Credit Clause implements this design by directing that a state, when acting as the forum for

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law was rejected), the Court has since abandoned the weighing-of-interests requirement. *Carroll v. Lanza*, 349 U.S. 408, 75 S.Ct. 804, 99 L.Ed. 1183 (1955); Weintraub, Due Process and Full Faith and Credit Limitations on a State's Choice of Law, 44 Iowa L.Rev. 449 (1959). Different considerations are of course at issue when full faith and credit is to be accorded to acts, records, and proceedings outside the choice-of-law area, such as in the case of sister state-court judgments.

litigation having multistate aspects or implications, respect the legitimate interests of other States and avoid infringement upon their sovereignty. The Clause does not, however, rigidly require the forum state to apply foreign law whenever another state has a valid interest in the litigation. See *Nevada v. Hall*, 440 U.S. 410, 424, 99 S.Ct. 1182, 1190, 59 L.Ed.2d 416 (1979); *Alaska Packers, supra,* 294 U.S. at 546-548, 55 S.Ct. at 523-524; *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501- 502, 59 S.Ct. 629, 632-633, 83 L.Ed. 940 (1939).

On the contrary, in view of the fact that the forum state is also a sovereign in its own right, in appropriate cases it may attach paramount importance to its own legitimate interests. Accordingly, the fact that a choice-of-law decision may be unsound as a matter of conflicts law does not necessarily implicate the federal concerns embodied in the Full Faith and Credit Clause. The Clause should not invalidate a state court's choice of forum law unless that choice threatens the federal interest in national unity by unjustifiably infringing upon the legitimate interests of another state. *Id.*[5] In our case, the Tennessee choice of law threatens the Petitioner's federal protected rights under the statute and constitution and also the interests of the Michigan courts who rendered the original decree.

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[5] See also Sumner, The Full-Faith-and-Credit-Clause--Its History and Purpose, 34 Or.L.Rev. 224, 242 (1955); *Weintraub, supra*, at 477; R. Leflar, *supra*, § 73, p. 143.

In *Allstate Insurance Company v. Hague*, 449 U.S. 302, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981), the Court held that if a state has only an insignificant contact with the parties and the occurrence and transaction, application of its law is unconstitutional. U.S.C.A.Const. Art. 4, § 1; Amend. 14. For a state's substantive law to be selected in a constitutionally permissible manner, that state must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair. *Id.*; *Allstate, supra.*

Even though the estate was probated in Tennessee, the latter did not have the "contacts" in the support and divorce decree. By applying its own law, Tennessee courts created a state interest in the support order which was unconstitutional and fundamentally unfair, especially, in light of the difference of Tennessee and Michigan law regarding the duration and enforceability of support decrees.

Therefore, the Petitioner respectfully requests that his Writ be granted so that the Honorable Court may address the Full Faith and Credit Clause with respect to support orders and resolve conflicts among the states as to the state's respective roles in enforcing and interpreting support orders.

B. By dismissing the Petitioner's claim without a hearing, the Tennessee highest courts violated the Petitioner's due process rights by failing to give the Petitioner the opportunity to present his claim of a valid and enforceable contract.

The Due Process Clause of the Fourteenth Amendment provides that no State "shall ... deprive any person of life, liberty, or property, without due process of law...." The Due Process Clause of the Fourteenth Amendment requires that a state prior to taking an action affecting an interest in property, provide notice that is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of that action. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 195, 103 S.Ct. 2706, 270 9, 77 L.Ed.2d 180 (1982); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950); Supreme Court's Construction of Due Process: 77 L.Ed 2d. 1485 (1999).

In *Mullane*, the Supreme Court stated that the fundamental right protected by the due process clause is the right to adequate notice and an opportunity to be heard before any state action depriving one of life, liberty or property is accorded finality. Adequate notice ensures the opportunity to be heard. Thus, *Mullane* established that state action affecting property must generally be accompanied by notification of that action. *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 108 S.Ct. 1340, 1344 (1988). The Petitioner's due process rights were blatantly violated since his contract embodied in a final judgment of the Michigan court

was denied without a hearing and without any deference to the foreign judgment.

Furthermore, the Tennessee appellate courts denied the Petitioner's claims based upon a six year statute of limitation. However, a conflict exists in Tennessee courts as to when the statute to enforce supports begins to run. *See Frye v. Frye*, 2001 WL 839039 ("the statute begins to run when the last child support payment is supposed to have been made"). The Petitioner's claim included not only past due support obligations for higher education but also his continued education. Moreover, the 1987 Tennessee statute hinted that there was an unlimited time for enforcement of child support payments, even if they had been reduced to judgment. T.C.A. §36-5-103(g). Thus, the Tennessee highest courts struggled not only in enforcing a foreign support judgment but also attacking the language of its own revised statute. The 1987 Amendment did not subject child support orders that had not been reduced to judgment to a statute of limitations. The constitution would prevent a retroactive application of a statute of limitations to the Petitioner's claim. Thus, the Petitioner was denied due process in having his claim heard on the merits and also in having the Tennessee high courts analyze the amended statute in enforcing support judgments.

To succeed in an action alleging a denial of procedural due process, in violation of a property interest, a plaintiff must demonstrate that he had a protected property interest, that he was deprived of that interest, and that he was afforded less procedure than was due. *Mullane, supra.* The Petitioner had a protected property interest of child support

and payment for higher education. The Tennessee courts were barred by the doctrine of res judicata in interpreting the Michigan order. The Tennessee's high courts sole responsibility was to enforce the support order and not scrutinize it.

The Tennessee chancery court considered the Michigan Court's order to be unconscionable, because the result appeared to the court to be outside the expectations of the parties. However, the outcome cannot be said to be outside the range of possible outcomes contemplated by a reasonable person at the time of the agreement, that is, to pay for his minor son's higher education expenses.[6] The lower court's function was not to analyze the effect of the property settlement agreement materialized in a decree, but solely to enforce it. By denying the Petitioner's claim outright, he was denied due process.

Therefore the Petitioner was denied his protected property interest in violation of the Fourteenth Amendment.

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[6] There is no evidence that the decedent made any effort in seeking a modification or change to the property settlement agreement with respect to the payment of higher education for his son. Since the decedent sought no relief in the Michigan courts, then the Tennessee courts must be estopped from changing the agreement's terms and outcome.

CONCLUSION

The Court should grant *certiorari* to review this important matter and reverse the Court of Appeals of Tennessee since it failed to abide by the full faith and credit for a decision of another state court and failed to provide due process to the Petitioner.

More importantly, there is a conflict among the states in enforcing divorce agreements. Given that the terms of divorce and settlement agreements are intentionally negotiated, another jurisdiction cannot apply its own laws in enforcing or not enforcing the clear terms and intent of the written contract. State courts should not have jurisdiction to rewrite the terms of contracts and disregard the law that was in effect when the contract was negotiated.

Respectfully submitted,

Marshall Sanders, Pro Se
The Petitioner

APPENDIX

APPENDIX A – ORDER FILED JANUARY 12, 2005

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

MARSHALL SANDERS v. ESTATE OF HARRY SANDERS, ROSALYN VINE, Executrix

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M2004-00280-SC-R11-CV

ORDER

On January 4, 2005 this Court entered an order providing as follows:

> "November 8, 2004, this Court entered an order denying the Rule 11 application. On November 23, 2004, mandate was issued by the Court of Appeals. On December 28, 2004, the appellant, Marshall Sanders, filed a motion requesting that this Court recall the mandate.
>
> Upon due consideration, the motion to recall mandate is OVERRULED. Costs shall be taxed against the appellant, Marshall Sanders, for which execution may issue if necessary."

On January 10, 2005, the appellant, Marshall Sanders, filed a pro se motion requesting this Court for a rehearing. In the alternative, the January 10, 2005 motion requests the Court to stay the mandate.

Upon due consideration, the appellant's January 10, 2005 motion is DENIED in its entirety. Costs shall be taxed against the appellant, Marshall Sanders, for which execution may issue if necessary.

APPENDIX B- ORDER FILED JANUARY 4, 2005

Filed Jan 4, 2005

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

MARSHALL SANDERS V. ESTATE OF HARRY SANDERS, ROSALYN VINE, Executrix

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M2003-00280-SC-R11-CV

ORDER

On November 8, 2004, this Court entered an order denying the Rule 11 application. On November 23, 2004, mandate was issued by the Court of Appeals. On December 28, 2004, the appellant, Marshall Sanders, filed a motion requesting that this Court recall the mandate.

Upon due consideration, the motion to recall mandate is OVERRULED. Costs shall be taxed against the appellant, Marshall Sanders, for which execution may issue if necessary.

PER CURIAM

APPENDIX C – OPINION DATED MARCH 25, 2004

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 11, 2003

IN RE: ESTATE OF HARRY SANDERS

Appeal from the Chancery Court for Bedford County
No. 24,032 James B. Cox, Chancellor
No. M2003-00280-COA-R3-CV - Filed March 25, 2004

A fifty-two year old man brought a claim against his father's estate for twenty-seven semesters of post-secondary educational expenses, contending that the father had agreed to pay those expenses as part of a Michigan divorce settlement thirty-five years earlier, but had failed to make more than a nominal payment. The trial court dismissed the claim. The son argues on appeal that a correct interpretation of the relevant choice of law statutes would have compelled the trial court to approve his claim. We do not agree, and we affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed and Remanded

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Ted W. Daniel, Shelbyville, Tennessee, for the appellant, Marshall Sanders.

Anthony W. Harris, Shelbyville, Tennessee, for the appellee, Estate of Harry Sanders, Rosalyn Vine, Executrix.

OPINION

I. THE FACTS

In 1967, a Michigan court granted Harry Sanders a Default Decree of Divorce from his wife, I. Dee Sanders. The Decree divided the marital property, ordered Mr. Sanders to pay alimony, and gave the wife custody of Marshall Sanders, the parties' then sixteen year old son, who is the appellant in this case. One clause of the Decree, titled "Support of Minor Child" ordered Harry Sanders to pay child support of $35 per week until his son reached 18 years of age.

A separate clause, titled "Higher Education of Minor Child" ordered that "the payment of expenses for the higher education of the minor child shall be in accordance with the terms of a Property Settlement Agreement entered into between the parties on the 2d day of August 1967, which Property Settlement Agreement is attached hereto and made a part hereof."

The Property Settlement Agreement (PSA) stated that "The husband agrees to pay for the college education of the minor son of the parties, Marshall Sanders, so long as said Marshall Sanders wishes to attend an accredited college or university and is accepted as a student by said institution."

A 1970 modification of the PSA did not change the college education provision. Harry Sanders died in Bedford County, Tennessee, on January 7, 2002, at the age of 82. The beneficiaries named in his Last Will and Testament and its Codicil were Marshall Sanders, another son of the testator, the testator's granddaughter, and a woman named Rosalyn Vine. The will bequeathed 5% of the net estate to Marshall Sanders, while Ms. Vine was awarded 60%. The testator named Rosalyn Vine as the personal representative of his estate, with the requirement of bond.

On February 13, 2002, Rosalyn Vine filed a Petition in the Chancery Court of Bedford County to Probate Harry Sanders' will. The court issued Letters Testamentary to Ms. Vine, and she posted bond for $352,410, which was the gross value of the estate. All beneficiaries were furnished with copies of the will, and creditors were notified to file their claims.

In March of 2002, Dee Sanders and Marshall Sanders both filed claims against the estate. Dee Sanders' claim was for past due alimony and other obligations under the 1970 PSA that the testator allegedly failed to satisfy during his lifetime. The trial court eventually dismissed her claim, and it plays no part in this appeal.

Marshall Sanders submitted a $495,000 claim for educational expenses that he had allegedly incurred between 1968 and 2002, contending that he was entitled to reimbursement under the higher education provision of his parents' PSA. Accompanying his claim was a list of eleven institutions of higher education, with the years of his alleged attendance and costs of between $5,000 and $35,000 per semester listed

for each one. The list included three different law schools. He also claimed that he was entitled to "near term anticipated college expenses" of $350,000, resulting from ten future semesters at $35,000 per semester, as well as an unascertainable amount for long term educational expenses leading to advanced degrees in law.

The personal representative filed exceptions to the claims of Dee Sanders and Marshall Sanders. Among other things, the exceptions stated that the claims in question were barred by the ten year statutes of limitations for contracts and for judgments. *See* Tenn. Code Ann. §§ 28-3-109 and 28-3-110. The exception also declared that "[s]aid claims are not filed in good faith but represent a retaliation against the decedent's estate and heirs ..."

The trial court conducted a hearing on the claims on November 8, 2002. Argument focused on both Michigan and Tennessee law relating to child support, to agreements for educational support of children who have passed the age of minority, and to the statutes of limitation applicable to such agreements. At the conclusion of the hearing, the chancellor announced that he would dismiss the claim because he found that the language in the divorce decree and the PSA regarding "the education of the minor child" did not indicate an intention to furnish educational support to the claimant past the age of 21. He also stated that a contrary holding would lead to an unconscionable result. This appeal followed.

II. ARGUMENT ON APPEAL

Marshall Sanders argues on appeal that he is entitled to prevail by virtue of the choice of law provisions of Tennes-

see law and the child support provisions of Michigan law. He relies on two choices of law provisions as governing the Tennessee courts' treatment of the 1967 support order and settlement agreement. He asserts that under Tennessee Code Annotated § 36-5-2604(a), the law of Michigan must be applied to determine "the nature, extent, amount and duration" of a support obligation and that, under Michigan law, his father's agreement to pay his college expenses would be considered a support order, not a contractual obligation. He also argues that by virtue of Tenn. Code Ann. § 36-5-2604(b), Tennessee's statute of limitations would apply rather than Michigan's, because it is longer. His position that Tennessee's statute of limitations is longer rests upon his assertion that Tenn. Code Ann. § 36-5-103(g), a statute which became effective on July 1, 1997, providing that a child support order may be enforced without any limitation as to time, applies in this case.

Before considering these arguments in specific, it is necessary to understand the nature of the obligation undertaken by the father herein and the authority of the courts to enforce such obligations.

III. TENNESSEE LAW ON AGREEMENTS TO PROVIDE POST-MAJORITY EDUCATIONAL SUPPORT

Biological parents have both a common law and a statutory duty to support their children until they reach the age of majority. *Smith v. Gore*, 728 S.W.2d 738, 750 (Tenn.1987); *Witt v. Witt*, 929 S.W.2d 360, 362 (Tenn. Ct. App. 1996), Tenn. Code Ann. § 34-1-102(a). Since the legal obligation of

support ends when the child reaches the age of majority, except under limited circumstances not alleged herein, such as disability of the child, the courts of Tennessee do not have the legal authority to order an unwilling parent to pay support for a child who has reached majority.

While a parent generally has no legal duty to support a child past the child's majority, *Blackburn v. Blackburn*, 526 S.W.2d 463, 465 (Tenn. 1975), a parent may voluntarily extend his or her support obligation beyond that imposed by law. *Penland v. Penland*, 521 S.W.2d 222, 224 (Tenn. 1975); *Hawkins v. Hawkins*, 797 S.W.2d 897, 898 (Tenn. Ct. App. 1990). A party to a divorce may assume by agreement an obligation of support that extends beyond his or her legal duty. *See Bryan v. Leach,* 85 S.W.3d 136, 151 (Tenn. Ct. App. 2001). Frequently, such agreements focus on post-secondary education, and, in fact, the Tennessee Supreme Court has held that payment of college expenses is an appropriate subject for an agreement between a husband and wife going through a divorce. *Penland*, 521 S.W.2d at 224; *see also Hathaway v. Hathaway*, 98 S.W.3d 675, 678 (Tenn. Ct. App. 2002).

Where divorcing parents have entered into such an agreement, it is binding on the parties and constitutes "a contractual obligation outside the scope of the legal duty of support during minority and retains its contractual nature . . . " *Penland*, 521 S.W.2d at 224; *Hathaway*, 98 S.W.3d at 678. In Tennessee, such an agreement retains its contractual nature and must be enforced as a contract, even though incorporated into a divorce decree. *Penland*, 521 S.W.2d at 224; *Bryan,* 85 S.W.3d at 151; *Hawkins,* 797 S.W.2d at 898.

A property settlement or marital dissolution agreement is essentially a contract between a husband and wife in contemplation of divorce proceedings. *Towner v. Towner*, 858 S.W.2d 888, 890 (Tenn. 1993); *Gray v. Estate of Gray*, 993 S.W.2d 59, 63 (Tenn. Ct. App. 1998). Such an agreement is enforceable, *Holt v. Holt*, 995 S.W.2d 68, 72 (Tenn. 1999), and "is to be construed as other contracts as respects its interpretation, its meaning and effect." *Bruce v. Bruce*, 801 S.W.2d 102, 105 (Tenn. Ct. App. 1990) (quoting *Matthews v. Matthews*, 24 Tenn. App. 580, 593, 148 S.W.2d 3, 11-12 (1940)). As with property settlement agreements generally, one that includes a provision on college expenses is subject to the same rules of contract interpretation as any other contract. *Hathaway*, 98 S.W.3d at 678.

The fact that the father's agreement to pay for his son's college education at issue herein would be enforced in Tennessee, if at all, as a contractual obligation has two consequences applicable to Mr. Sanders' position. First, the agreement must be construed using the rules that govern interpretation of contracts. Second, it is subject to the statute of limitations applicable to contract disputes. We begin with the contract interpretation issue.

A. INTERPRETATION OF THE AGREEMENT

"The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern." *Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc.*, 78 S.W.3d 885, 890 (Tenn. 2002). The purpose of interpreting a written contract is to ascertain and

give effect to the contracting parties' intentions, and where the parties have reduced their agreement to writing, their intentions are reflected in the contract itself. *Id.*; *Frizzell Constr. Co. v. Gatlinburg, L.L.C.*, 9 S.W.3d 79, 85 (Tenn. 1999). Therefore, the court's role in resolving disputes regarding the interpretation of a contract is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the language used. *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999); *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth Inc.*, 521 S.W.2d 578, 580 (Tenn. 1975).

Where the language of the contract is clear and unambiguous, its literal meaning controls the outcome of contract disputes; but, where a contractual provision is ambiguous, *i.e.*, susceptible to more than one reasonable interpretation, the parties' intent cannot be determined by a literal interpretation of the language. *Planters Gin Co.*, 78 S.W.3d at 890. Where contracts are unambiguous, courts defer to the contracting process by enforcing written contracts according to their plain terms without favoring either contracting party. *Cocke County Bd. of Highway Comm'rs v. Newport Utils. Bd.*, 690 S.W.2d 231, 237 (Tenn. 1985); *Hardeman County Bank v. Stallings*, 917 S.W.2d 695, 699 (Tenn. Ct. App. 1995).

However, where the parties have omitted a material term, courts may incorporate a reasonable one into the contract. *Minor v. Minor*, 863 S.W.2d 51, 54 (Tenn. Ct. App. 1993). Thus, when a contract does not include a material term, courts will imply a reasonable one. *McClain v. Kimbrough Constr. Co.*, 806 S.W.2d 194, 198 (Tenn. Ct. App. 1991) (holding where parties omit material provisions from their

contract, the courts will impose obligations on the parties "that are reasonably necessary for the orderly performance of the contract."); *see also Floyd v. Floyd*, No. M2000-02344-COA-R3-CV, 2001 WL 997380, at *5 (Tenn. Ct. App. Aug. 31, 2001) (no Tenn. R. App. P. 11 application filed) (holding that where an MDA failed to establish a specific visitation schedule, the implied reasonable standard would be applied).

Further, in construing contracts, courts must look at the language and the parties' intent and impose a construction that is fair and reasonable. *ACG, Inc. v. Southeast Elevator, Inc.*, 912 S.W.2d 163 (Tenn. Ct. App. 1995). In *Wallace v. National Bank of Commerce*, 938 S.W.2d 684 (Tenn. 1997), the Tennessee Supreme Court, in examining the duty of good faith in performance that is implied in every contract, discussed with apparent approval a Court of Appeals holding that "a court must judge the performance against the intent of the parties as determined by a reasonable and fair construction of the language of the instrument." *Id.* at 686.

This court has had the opportunity to apply these rules of contract interpretation in the context of an agreement to provide college expenses. In *Pylant v. Spivey*, No. M2002-00602-COAR3-CV, 2003 WL 23099680 (Tenn. Ct. App. December 31, 2003) (Tenn. R. App. P. 11 application filed Feb. 26, 2004), we surveyed prior holdings on this issue and concluded that this court had consistently held that such a contractual obligation to pay college expenses is subject to an implied condition of reasonableness, at least where no specific college or amount of expenses is set forth. *See, e.g.*, *Hathaway*, 98 S.W.3d at 679; *Vick v. Vick*, No. 02A01-9802-

CH-00051, 1999 WL 398115, at*7 (Tenn. Ct. App. June 16, 1999) (no Tenn. R. App. P. 11 application filed).

The court in *Hathaway, supra,* discussed with approval prior decisions holding that just "because the agreement contained no limitation on the defendant's obligation, that did not mean the child 'could attend any college, regardless of the cost.'" 98 S.W.3d at 680, quoting *In re Marriage of Schmidt*, 684 N.E.2d 1355, 1362 (Ill. App. 1997). "The fact that an agreement does not set a specific amount or otherwise identify a measurable limit does not mean that the obligation is unlimited or that the child can unilaterally obligate the parent to pay an unreasonable amount." *Pylant*, 2003 WL 23099680, at *10. We think this reasoning applies to Mr. Sanders' claim that his father's obligation was unlimited as to duration or amount.

Whether the term "reasonable" is written into the contract by the parties or is implied into it by the courts, "reasonable" does not mean unlimited. *Hathaway*, 98 S.W.3d at 679, citing *Moscheo v. Moscheo*, 838 S.W.2d 226, 228 (Tenn. Ct. App. 1992). The answer to the question of what is reasonable will vary according to the circumstances. *Moscheo*, 838 S.W.2d at 227. Herein, the parties did not specify the cost of the education or describe it in a quantifiable way. We will not presume, however, that the parties intended an unlimited obligation. Instead, we presume they intended to establish a reasonable obligation, including one of reasonable duration.

Reasonableness must be viewed in light of the parties' situation at the time of the making of the agreement as well

as at the time performance becomes due. *Hathaway*, 98 S.W.3d at 680-81; *see also Vick*, 1999 WL 398115, at * 8. When a court is called upon to supply a missing term with a reasonable one, it must consider the subject matter of the contract, the situation of the parties, their intention in what they contemplated at the time the contract was made, and the circumstances attending the performance. *Minor*, 863 S.W.2d at 54.

The father herein agreed to pay for the college education of his son. Although the agreement did not establish an outside limit on the number of semesters or years for which the father would pay expenses, we cannot interpret the language to obligate the father to pay for a lifetime of taking courses. We will supply the missing durational term with a reasonable one, at least for purposes of determining the effect of the applicable statute of limitations.

The common, generally accepted meaning of "college education" is a four year course of study leading to a baccalaureate degree. It does not include post graduate studies. The property settlement herein referred to "accredited college or university." Mr. Sanders claims educational expenses for undergraduate and law school studies from 1968 through 2002 and into the future. It appears from the claim that Mr. Sanders attended college on a regular basis from the fall of 1968 through the fall of 1970. His next claimed expense is for the fall of 1977; there is another break and then a claim for the spring of 1981. The claim reflects that his next educational experience was entry into law school in the spring of 1983. Assuming he was required to have a college degree

before entering law school, it appears he finished his "college education" in the spring of 1981.

We are reluctant to categorically state that an otherwise nonspecific obligation to pay for a college education is always limited to four years of expenses, because reasonableness is specific to the circumstances presented. However, there is nothing in the record before us to justify any other term as more reasonable. Even giving Mr. Sanders the benefit of the most liberal interpretation of the language of the agreement, the father's obligation could not be construed as including post graduate studies.

B. APPLICABLE STATUTE OF LIMITATIONS

In Tennessee an action on a contract must be brought within six years of when the cause of action accrues. Tenn. Code Ann. § 28-3-109(a)(3) (regarding actions on contracts not otherwise expressly provided for). A cause of action for breach of contract or to enforce a contract accrues when a party repudiates a contract or clearly indicates that he or she refuses to perform. *Ferguson Harbour Inc. v. Flash Market, Inc.*, 124 S.W.3d 541, 548 (Tenn. Ct. App. 2003). Under one reasonable interpretation of the father's obligation to provide a college education in the case before us, that obligation first arose in 1968, and ended four years later in 1972. Under the most liberal interpretation of the obligation, and if there were facts to support that interpretation, the obligation certainly ended when the son attained a college degree in 1981. The claim herein was made well beyond the statute of limitations under either interpretation.

IV. MR. SANDERS' ARGUMENTS

Mr. Sanders seeks to use the 1997 Tennessee statute that removed time limitations on the enforcement of child support judgments, found at Tenn. Code Ann. § 36-5-103(g), to avoid dismissal of his claim on statute of limitations grounds. His argument in this regard rests on two premises: (1) that under Michigan law, his father's agreement to pay for his college education would be enforced as a child support order, not as a contract, and (2) the 1997 removal of statute of limitations defenses to enforcement of child support orders can be applied retroactively to his claim. While the first of these premises may not be inaccurate, it does not compel the result asserted. Additionally, the second is simply unsupported by the law.

A. MICHIGAN LAW ON POST-MAJORITY EDUCATIONAL SUPPORT

In *Penland, supra*, the Tennessee Supreme Court was presented with the questions of the enforceability and method of enforcement of a divorce-related agreement to provide post-majority educational support that was incorporated into the divorce decree. The Michigan Court of Appeals considered the same questions in *Ovaitt v. Ovaitt,* 204 N.W.2d 753 (Mich. App. 1971) and reached a slightly different result. Relying on a Michigan statute that gave courts the authority to order support to a child after he or she reached the age of majority "in case of exceptional circumstances," the court held that the trial court had jurisdiction to order support and college expenses for the children who were minors at the

time of the order. Because the trial court had the power to make provision for college expenses when the children were minors, even though the obligation would extend beyond the children's minority, the parties' agreement regarding such expenses, incorporated into the decree, was enforceable as an order of the court by contempt proceedings. *Id.* at 759. [1]

The Michigan Supreme Court has since interpreted amended statutory provisions to preclude an award of post-majority support. *Smith v. Smith*, 447 N.W.2d 715, (Mich. 1989). However, the *Smith* decision has been interpreted as not precluding the enforcement of a contract to provide college expenses where that agreement was of record or part of the judgment in the case. *Aussie v. Aussie*, 452 N.W.2d 859, 863 (Mich. Ct. App. 1990). In *Aussie,* the parents had entered into an agreement years after the divorce in which the father agreed to pay a specified amount toward the college education of the oldest of their three children, in return for the mother's agreement not to seek an increase in child support. The father subsequently stopped paying the amount he had agreed to. Although the court remanded the case to the trial court for entry of a judgment "for that portion of the contract to pay $6,000 a year toward Andrew's college expenses which defendant refused to perform," it is not clea

[1] The court specifically found that allowing the mother to enforce the obligation as a court order "would have the salutary effect of permitting the defendant in this case to recover directly without resorting to a separate action in contract or quantum meruit, thus obviating circuity of action." *Id.* at 758.

whether that judgment was based upon the trial court's authority to enforce child support orders or was, instead, a breach of contract remedy.

While the cases subsequent to *Ovaitt* are not entirely clear on the issue, we will not disagree with Mr. Sanders' characterization of Michigan law as allowing an agreement to provide post majority support to be enforced as a court order or judgment. Our agreement on that point, however, does not result in the conclusion Mr. Sanders would have us reach for at least two reasons. The first is that his argument requires us to believe that Michigan courts would interpret the settlement agreement herein as obligating his father to pay for essentially a lifetime of forays into higher education. Mr. Sanders has provided no authority, and we have found none, that persuades us to this belief.

The divorcing parents in *Ovaitt*, *supra*, entered into a property settlement agreement that included an obligation by the father to pay $100 per month for his two children while they were attending college, for no more than four years for each child. The father stipulated that at the time of the agreement, he knew that the children would reach the age of majority before completing four academic years. The *Ovaitt* court concluded that it would be inequitable not to enforce the father's agreement, because he clearly knew when he entered into the agreement that the obligation would continue beyond the minority of his children, and that enforcement of the agreement was a valid exercise of the court's discretion. 204 N.W.2d at 758-759.

Neither the *Ovaitt* decision nor others relied upon by Mr. Sanders support his argument that Michigan courts are obligated to enforce such an agreement regardless of the circumstances. The cases uniformly refer to a trial court's decision to enforce post-majority child support as an exercise of the court's discretion. *See, e.g., Gibson v. Gibson,* 313 N.W.2d 179, 181 (Mich. App. 1981) and *Wagner v. Wagner* 306 N.W.2d 523 (Mich. App. 1981). We interpret Michigan law as including equitable considerations in a decision on whether and to what extent to enforce an agreement to provide post-majority educational support. Suffice it to say that *Ovaitt, Gibson* and *Wagner* involved individuals who had reached the ages of either 18 or 21 years, and who were seeking through the institution of timely proceedings to compel an obligor parent to furnish the support he had unambiguously agreed to. There was no indication that any of the recipients were seeking lifetime educational support, but rather an implication that they needed short-term help to complete their formal education. Significantly, Mr. Sanders has provided us with no authority to suggest that a Michigan court would interpret the contractual obligation to pay for a "college education" to include over thirty years of sporadic study and graduate school attendance.

The second reason that we cannot reach the result argued by Mr. Sanders is that his claim is barred by the applicable statute of limitations. Even if we interpret the obligation to pay for his college education as incorporated into the divorce decree and enforceable as a court order, his claim would be subject to a ten year statute of limitations, as explained below.

B. TIME FOR BRINGING ACTION TO ENFORCE

The Tennessee amendment removing limitations on child support judgments became effective July 1, 1997, thirty years after entry of the order and settlement agreement sought to be enforced in this case. We have addressed a similar argument regarding enforcement of a child support order during minority.

> Because a defendant has a vested right in a statute of limitations defense if the cause of action has accrued and the limitations period has expired, *Wyatt v. A-Best Prods. Co., Inc.*, 924 S.W.2d 98, 104 (Tenn. Ct. App. 1995), and because the Tennessee Constitution prohibits retroactive application of a statute where such application would impair vested rights, *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999), this court has previously held that Tenn. Code Ann. § 36-5-103(g) cannot be applied retroactively to resuscitate a child support judgment that was otherwise no longer enforceable due to expiration of an applicable statute of limitations. *Frye v. Frye*, No. M2000-02123-COA-R3-CV, 2001 WL 839039, at *2-*3 (Tenn. Ct. App. Jul. 24, 2001) (no Tenn. R. App. P. 11 application filed); *County of San Mateo, Cal. v. Green*, No. M1999-00112-COA-R3-CV, 2001 WL 120729, at *2 (Tenn. Ct. App. Feb. 14, 2001) (no Tenn. R. App. P. 11 application filed).

Mitchell v. Johnson, No. M2002-002310-COA-R3-CV, 2003 WL 22251335 at *3 (Tenn. Ct. App. Oct. 2, 2003) (no Tenn. R. App. P. 11 application filed).

Consequently, the question is whether Mr. Sanders' father had a vested right in the protection of a statute of limitation prior to July 1, 1997. The general statute of limitations is set out in Tenn. Code Ann. § 28-3-110 and provides:

> The following actions shall be commenced within ten (10) years after the cause of action accrued; . . . (2) Actions on judgments and decrees of courts of record of this or any other state or government; and (3) All other cases not expressly provided for.

The divorce decree and related property settlement agreement at issue herein were entered in 1967. Prior to the claim that is the subject of this appeal, Mr. Sanders apparently never pursued enforcement of the agreement and there was consequently no prior judgment for arrearages.[2] Child sup

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[2] A judgment for arrearages has consistently been considered final. Consequently, such a judgment is subject to the ten year statute of limitations. "In those cases where the arrearages for child support have been reduced to a judgment for a sum certain, the custodial parent is required to bring the action for enforcement within ten years of obtaining the judgment." *Frye*, 2001 WL 839039, at *2; *see also San Mateo*, 2001 WL 120729, at *2; *Anderson v. Harrison*, No. 02A01-9805-GS-00132, 1999 WL 5057 at *3 (Tenn. Ct. App. Jan. 7, 1999) (no Tenn. R. App. P. 11 application filed); *Vaughn v. Vaughn*, No. 88-26-11, 1988 WL 68062 at *4 (Tenn. Ct. App. July 1, 1988) (no Tenn. R. App. P. 11 Application filed).

port orders that remained within the jurisdiction of the court and were subject to modification during their pendency were traditionally exempt from statute of limitations challenges, because they were not considered final. *Mitchell,* 2003 WL 22251335, at *4-5; *State ex rel. Woody*, No. 44, 1990 WL 2867 (Tenn. Ct. App. Jan. 19, 1990) (no Tenn. R. App. P. 11 application filed). However, such orders remained within the authority of the court only through minority of the child. In 1987, the General Assembly amended Tenn. Code Ann. § 36-5-101 to provide, in pertinent part, "Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state."[3] Consequently, support orders became judgments enforceable as any other judgment and were "subject to the defenses applicable to judgments generally." *Bloom v. Bloom*, 769 S.W.2d 49, 492 (Tenn. Ct. App. 1988).

Child support orders, prior to the 1997 amendment eliminating limitations on such judgments, were subject to the ten year general statute of limitations as are other judgments not covered by more specific limitations statutes.

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[3] One clear result of this enactment was to remove from the courts the discretion to forgive or reduce past arrearages. *Rutledge v. Barrett*, 802 S.W.2d 604, 606 (Tenn. 1991). It also had the effect of removing the availability of traditional equitable defenses to enforcement actions, including laches. *Id.* at 607.

Mitchell, 2003 WL 22251335, at *6; *see also Anderson*, 1999 WL 5057, at *3 (stating "Recent decisions by this court have demonstrated a growing acceptance of the premise that the ten-year statute of limitations applies to child support orders just as it applies to any other judgment or decree"). Because there was no clear legislative mandate exempting child support judgments, they were "subject to the defense of the statute of limitations as is 'any other judgment.'" *In re Estate of Meader*, No. 03A01-9707-CH-00252, 1997 WL 672205, at *2 (Tenn. Ct. App. Oct. 30, 1997) (no Tenn. R. App. P. 11 application filed); *see also Rodakis v. Byrd*, No. 03A01-9206-GS-00202, 1992 WL 301312, at *4 (Tenn. Ct. App. Oct. 23, 1992) (no Tenn. R. App. P. 11 application filed).

The statute of limitations for enforcement of a support order begins to run on the date that the last payment was due by the terms of the judgment under scrutiny. *Mitchell*, 2003 WL 22251335, at *7; *Rodakis*, 1992 WL 301312, at *3; *Frye*, 2001 WL 839039, at *2. As explained above, the most liberal interpretation of the obligation herein would have made the last payment due in the spring of 1981. Thus, the time for bringing an action to enforce the agreement if it were considered a judgment of the court expired in the spring of 1991. The claims filed herein by Mr. Sanders were clearly time barred.

V. CONCLUSION

The order of the trial court is affirmed. The cause is remanded to the Chancery Court of Bedford County for further proceedings that may be necessary, consistent with this opin-

ion. Tax the costs on appeal to the appellant, Marshall Sanders.

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PATRICIA J. COTTRELL, JUDGE

APPENDIX D – ORDER OF COURT, DATED DECEMBER 5, 2002

IN THE PROBATE COURT OF BEDFORD COUNTY, TENNESSEE

IN RE:	)	
THE ESTATE OF	)	
HARRY SANDERS, DECEASED	)	CASE NO. 24,032
ROSALYN VINE,	)	
PERSONAL REPRESNTATIVE	)	

ORDER OF COURT

This cause came on to be heard on the 8th day of November, 2002, before the Honorable J.B. Cox, Chancellor Bedford County Chancery Court, holding the Probate Court of Bedford County, at Shelbyville Tennessee, upon the filing of claims and exceptions to claims with a motion to dismiss in the above referenced matter. Based upon the record, briefs filed in the matter, oral argument presented, and the applicable statutory and case law the Court dismisses the claims filed and assigns costs to the claimant based upon the following analysis.

The claims filed for the payment of $495,000.00 of college expenses allegedly accrued and the claims for future anticipated college expenses in the sum of $350,000.00 are governed by the interpretation of the terms of the decree and property settlement agreement incorporated into the divorce decree. The court finds that the obligation to pay college

settlement agreement incorporated into the divorce decree. The court finds that the obligation to pay college education expenses of the "minor son" under the terms of the property settlement agreement terminated upon the claimant reaching the age of majority in February of 1972, and any amounts owed are barred by the applicable 10 year statue of limitations. The presence of terms referring to the "minor" and "son" in a decree and property settlement agreement have been judicially interpreted and applied by the Michigan Courts limiting the period of similar obligations to under 21 years of age and not beyond. *Smith v. John Hancock Mutual Life Insurance Company,* 237 N.W. 2nd 244, (1975 Mich. App.) *Price v. Price,* 232 N.W. 2d 630 P.633 (Mich. Sup. Ct. 1975). *Johnson v. Johnson,* 78 N.W. 216 P.426 (1956 Mich. Sp. Ct.) This is not inconsistent with Tennessee case law suggesting terms referring to minority would limit such obligations to the age of majority and beyond. *Penland v. Penland,* 521 S.W. 2d 222 P.244 (Tenn. 1975).

An interpretation of the incorporated agreement to pay college education expenses of the minor son beyond the age of majority as on-going child support is not clearly supported by the language of the Decree nor the terms of the PSA relied upon. "Absent a specific written agreement between the parties providing for support beyond majority the court is without authority to order post majority support." *Ovaitt v. Ovaitt,* 204 N.W. 2d 628p. 755 (1972 Mich.App.) Claims and actions based on decrees and judgments of courts in this state or any other state are barred if not acted upon within 10 years from the time the right of action accrued. (Michigan RJA 5809 (3) and T.C.A. 28-3-110(2). The right to enforce

the claims asserted after February 17, 1982, is therefore barred by the case law and statue of limitations of both states applicable to judgments of courts or child support and has accrued to a sum certain by operation of law. Michigan RJA 5809 (3). T.C.A. 28-3-110(2)). *Rzadkowolski v. Pefley,* 603 N.W. 2d 646, (1999 Mich. Ct. App.) *Frye v. Frye,* WL 143602-3, (2001 Tn.Ct.App.) *Gabler v. Woditsch,* N.W. 2d, 647 (1985 Mich. Ct. App.)

The alternative analysis of the relied upon agreement as urged by claimant's counsel would result in the interpretation and enforcement of a clearly unconscionable contract that could not have been within the contemplation of the parties as reasonable. Such an interpretation would not be supported by principles of law governing the interpretation and enforcement of contracts based on the plain meaning of the terms of the agreement and the contemplated intent of the parties. *Hennigan v. Hennigan,* 1999 WL 330173.

The claims of I. Dee Sanders are likewise unenforceable under the statute of limitations of both states aforementioned since her right to action accrued January of 1972, when the payment was due under the property settlement agreement and her right to enforce expired 10 years later.

J.B. Cox, Chancellor
Dated this 5th day of December, 2002

APPENDIX E – AGREED ORDER, DATED JANUARY 24, 2003

IN THE CHANCERY COURT OF BEDFORD COUNTY, TENNESSEE AT SHELBYVILLE

IN THE MATTER OF:	)	
THE ESTATE OF	)	
HARRY SANDERS, DECEASED	)	
ROSALYN VINE, EXECUTRIX	)	**No. 24,032**

AGREED ORDER

COME NOW the parties, by and through counsel, and in accordance with Rule 60.02, T.R.C.P., having stipulated and agreed that the final order in this cause was neither signed by, nor served upon opposing counsel, as required by Rule 58 of the Tennessee Rules of Civil Procedure, and that relief from the final order in this cause is justified based on mistake, inadvertence, or excusable neglect; and having agreed therefore, that the final order in this cause be amended to be dated as of the same date as this agreed order.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the final order in this case be amended, so that it is dated as of:

THIS 24th DAY OF JANUARY, 2003

J.B. Cox, Chancellor